

BEFORE THE
BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Petition for an Interim
Suspension Order Against:

MARK MEINRAD MULLINS,

Pharmacist License No. RPH 56060

Respondent.

Case No. 6331

OAH No. 2018020543

AMENDED INTERIM SUSPENSION ORDER

The petition of Virginia Herold, for an interim suspension order against Respondent, Mark Meinrad Mullins, was heard by Susan J. Boyle, Administrative Law Judge, Office of Administrative Hearings (OAH), on March 7, 2018, in San Diego, California.

Petitioner was represented by Nicole R. Trama, Deputy Attorney General.

Respondent did not appear.

This Amended Interim Suspension Order amends the order entered on March 9, 2018, to correct the OAH case number in the caption and respondent's license number in the Order.

Respondent's Failure to Appear

1. This Petition for Interim Suspension Order in Case No. 6331 was set to be heard on March 7, 2018, at 1:00 p.m., at 1350 Front Street, Suite 3005, San Diego, CA. Respondent was not present in the courtroom when the case was called. The matter trailed to provide respondent sufficient time to appear or communicate with either the petitioner, the Deputy Attorney General or the Office of Administrative Hearings.

2. The matter was called again at 1:30 a.m. Respondent was not present in the hearing room. The Deputy Attorney General represented that, between 1:00 p.m. and 1:30 p.m., she telephoned respondent and left a message asking him to return her call and/or telephone the OAH to advise whether he was planning on

attending the hearing on the petition. Respondent failed to appear and neither petitioner, the Deputy Attorney General, nor the Office of Administrative Hearings received any communication from him.

3. As demonstrated by the proof of service showing proper service of the Notice of Petition for an Interim Suspension Order with attachments, petition, Notice of Lodgment of Exhibits, and the Declaration of Nicole R. Trama in Support of Petition for Interim Suspension Order confirming a telephone call to respondent giving him notice of the filing of the petition advising him of the date, time and location of the hearing on the petition, respondent was properly served with the petition and received timely notice of the hearing on the petition. Good cause was not shown for respondent's failure to appear at the noticed hearing. Petitioner's request to proceed with the hearing and present evidence was granted. Respondent failed to appear at any time during the hearing.

FINDINGS OF FACT

Incidents Occurring Prior to the Petition for Interim Suspension Order

4. On September 1, 2004, the board issued Pharmacist License Number RPH 56060 to respondent. The license was in full force and effect at all relevant times. It will expire on August 31, 2018, unless renewed.

5. In September 2017, a corporate analyst from Rite Aid Pharmacy Headquarters notified one of its Pharmacy District Managers that there were discrepancies concerning the inventory of tramadol¹ reported by Rite Aid Pharmacy store number 5728. Respondent was the Pharmacist in Charge (PIC)² of store number 5728.

6. On October 4, 2017, the Pharmacy District Manager and a loss prevention officer conducted an after-hours, covert count of tramadol in store 5728. The count disclosed a difference between the "on-hand" inventory and the amount of tramadol reported to the Rite Aid Corporation by respondent.

7. On October 11, 2017, and October 26, 2017, the Pharmacy District Manager and loss prevention officer conducted additional after-hours, covert counts

¹ Tramadol is a schedule IV controlled substance. A valid prescription from a medical professional is required to obtain tramadol.

² A PIC is a pharmacist who has additional responsibilities, including overseeing the day-to-day operations of the pharmacy and ensuring compliance with state and federal laws and regulations governing pharmacies.

at store 5728. Additional losses of tramadol and a shortage of zolpidem³ were discovered. In total, the covert counts uncovered a loss of 667 tablets of tramadol 50 mg and 178 tablets of zolpidem.

8. On November 6, 2017, a Senior Manager of Investigations from Rite Aid interviewed respondent about the drug losses in the pharmacy. Respondent admitted he diverted tramadol and zolpidem from the pharmacy without a valid prescription and for his own use. He told the investigator he began diverting the drugs after his father died and he was depressed and in pain. He denied having a substance abuse problem. Respondent signed a handwritten statement admitting he diverted drugs from store 5728. He wrote he felt shame and guilt, understood his conduct was wrong, felt better “now,” and vowed never to divert drugs again.

9. Rite Aid terminated respondent on November 17, 2017, and notified the board of the basis for the termination.

10. After receiving the notification from Rite Aid, the board began an investigation of respondent’s conduct. In an interview conducted as part of the board’s investigation, respondent again admitted he diverted tramadol and zolpidem from store 5278. He stated he felt “anger and pain” after his father’s death and had trouble sleeping. He took the drugs to “fix himself.” He further stated he adjusted the on-hand count inventory records to match what Rite Aid Corporate reported the pharmacy should have. Respondent stated he did not have a drug problem and had not taken any steps to address the source of his conduct in diverting drugs.

11. Respondent’s conduct violated several laws governing pharmacists and pharmacies, including engaging in unprofessional conduct, committing acts involving moral turpitude and dishonesty, falsely signing pharmacy records, self-administration of a controlled substance, and violating state and federal laws governing pharmacies.

Petition for Interim Suspension Order

12. On February 14, 2018, based upon the facts described above, petitioner filed a Petition for Interim Suspension Order against respondent seeking to suspend his pharmacist license pending the issuance of a final decision by the Pharmacy Board on the charges and allegations in an accusation to be filed pursuant to Business and Professions Code section 494. The petition alleged that respondent engaged in acts constituting cause for discipline under the Pharmacy Laws and that permitting him to continue to act in the position of a pharmacist would endanger the public health, safety, or welfare. The legal arguments submitted with the petition contend that respondent has “demonstrated that he is a dishonest practitioner and is a risk to

³ Zolpidem is a schedule IV controlled substance. A valid prescription from a medical professional is required to obtain zolpidem.

patient's safety and welfare." Additionally, it was argued respondent used his position as PIC to steal controlled substances from his employer and cover up his illegal actions.

13. The petition was supported by declarations and documents that provided evidence that respondent committed the acts alleged, the acts are a violation of the Business and Professions code and the Pharmacy Laws, and permitting respondent to continue to act as a pharmacist and/or PIC would endanger the public health, safety, or welfare.

14. Respondent did not appear and no evidence was submitted on his behalf.

LEGAL CONCLUSIONS

Statutory Authority

1. The board plays a vital role in safeguarding patients and the public by educating and training pharmacists and requiring strict compliance with laws and regulations governing pharmacies and pharmacists. The board is tasked with closely monitoring supplies of drugs that are handled by pharmacists and ensuring controlled substances are not diverted to personal use by those entrusted with access to the controlled substances. The ISO process offers a way for the board to seek the suspension of a license when the licensee is engaging in conduct that violates the law and poses an immediate danger to the public health, safety, or welfare, pending the filing of an accusation.

2. Business and Professions Code section 494, subdivision (a), in relevant part, provides that an ISO may be issued when both of the following are established:

(1) The licentiate has engaged in acts or omissions constituting a violation of this code . . .

(2) Permitting the licentiate to continue to engage in the licensed activity, or permitting the licentiate to continue in the licensed activity without restrictions, would endanger the public health, safety, or welfare.

3. The standard of proof in proceedings to obtain an ISO is preponderance of the evidence. (Bus. & Prof. Code, § 494, subd. (e).)

4. Business and Professions Code section 4301 authorizes, among other things, the suspension of a pharmacist's license if he or she engages in unprofessional conduct. Unprofessional conduct includes committing an act involving moral

turpitude, dishonesty, fraud, deceit or corruption (Bus. & Prof. Code § 4301, subd. (f); knowingly making or signing a document that falsely represents the existence or nonexistence of facts (Bus. & Prof. Code § 4301, subd. (g); self-administering controlled substances to the extent or manner dangerous to oneself (Bus. & Prof. Code § 4301, subd. (h); violating state and federal statutes regulating controlled substances (Bus. & Prof. Code § 4301, subd. (j); violating state and federal laws governing pharmacies (Bus. & Prof. Code § 4301, subd. (o).

Evaluation

5. To allow a pharmacist who has diverted controlled substances from his employer for his personal use and used his knowledge and experience to surreptitiously conceal his illegal acts to continue to act as a pharmacist with unfettered access to controlled substances poses a threat to patients, consumers and the public. Further, like any professional, pharmacists must not only be competent in their skills, but they must conduct their affairs with honesty and integrity. Through his conduct, respondent has shown a lack of honesty and integrity.

6. Cause has been established pursuant to section 494, subdivision (a)(1), to suspend respondent's pharmacist license pending a hearing. A preponderance of the evidence demonstrated that respondent engaged in acts that violate the Business and Professions code and the laws and regulations governing pharmacists.

7. Cause has been established pursuant to section 494, subdivision (a)(2), to suspend respondent's pharmacist license pending a hearing. A preponderance of the evidence demonstrated that allowing respondent to continue to engage in licensed activity until an accusation is filed and a decision is rendered thereon would endanger the public health, safety, and welfare. There are no restrictions or protections that could be imposed upon respondent's license to allow him to safely continue to work as a pharmacist pending a hearing on the merits of an accusation.

Therefore, the petition is granted.

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ORDER

Pharmacist's license number RPH 56060 held by respondent Mark Meinrad Mullins is hereby suspended pending a hearing on an accusation to be filed by petitioner within the time set by section 494.

March 14, 2018

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Susan J. Boyle

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SUSAN J. BOYLE
Administrative Law Judge
Office of Administrative Hearings